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C R I M E
AND
P U N I S H M E N T.

BY
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FORMERLY
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AUBURN, N. Y.:
W. J. MOSES, 16 CLARK STREET.
1866.

CRIME AND PUNISHMENT.

Impelled by a sense of the importance to society of a better understanding of crime, its causes, and the character of the perpetrators thereof, that its sources, peradventure, may be discovered, and, by possibility, partially dried up, I present for the contemplation of the Philosopher and Legislator, some observations on the New York system of State Prison punishment.

If the punishment of crime, and the management of the criminal, necessarily involve the transactions related, may it not well be asked whether the evil is an inherent element of humanity, or whether it is not the result, in great degree, of the influence of institutions by which society is governed ?

Crime has increased in greater ratio than the increase of population, until, not only individual security, but social order, is endangered by its alarming proportions, and it becomes a matter of necessity that the causes of this disproportion be sought with diligence, and probed with fearlessness.

That many influences now operate to produce this result, no contemplative observer of events can be unmindful :

The cheap literature of the day, spread broadcast over the land, ministering to a depraved sensuality, or the appetite of a mere mental dissipation :

The periodical issue of those gorgeous plates of fashion, which, among a people who regard equality in outward adornment as the evidence of social position, stimulate a desire for dress, to gratify which, health, wealth, and virtue are too often sacrificed :

Hiding from public view, discharged perpetrators of crime, who, Cain-like, should be known of all men, as a part of the penal polity practiced in some portions of the country, thus exposing the innocent, while shielding the guilty :

Prison Discipline Societies publishing prison bills of fare, that, leaving pauper life unnoticed, make even the well-to-do marvel at the grade of living furnished the criminal, thus making plenty appear to the destitute as the reward of crime :

Strikes of labor, by which time and means are wasted ; and combinations of capital, for purposes of extortion, together, make the commission of crime almost a necessary instrument of self-preservation to the indigent :

Legislative attempts to advance through penal enactments, reforms that pertain to individual conscience only, thereby goading resistance to law and order :

Intemperance, stimulated by the profuse distribution of money so suddenly among the people, is bearing its legitimate fruits, improvidence, poverty and crime, in fearful abundance :

The administration of oaths innumerable, in reference to almost every business transaction of private life, has well nigh absorbed Omniscience in the person of the revenue official, fast bartering their solemnity for lucre or immunity against penal statutes :

Secularizing the pulpit, making earthly schemes instead of heavenly aspirations the objects of its mission, thereby losing hold on the mystic cord that binds man to his Maker, and through the tightening of which his moral sensibility is exalted, and accountability to his fellow mortal and his God alone adjusted :

Uprooting by physical force, institutions more ancient than history, anterior to records of Holy Writ, as old as tradition itself, thus changing the status of great populations, involving in its train, crimes consequent on social disintegration :

The greed of gain, and thirst for power, which so mar this generation with their unhallowed enormities, rendering it questionable whether the doctrine of accountability is believed to be aught than a cunningly devised dogma :

And the Free School—a system based in appropriating the gains of one citizen to the benefit of another on the questionable plea of public utility, having rendered right in property less sacred, has stimulated a recklessness of, and imparted a facility to the commission of crime that no moral training will be likely soon to eradicate.

That the doctrine that public utility is sustained by any success in a general mental cultivation, or that such cultivation, even if possible, has resulted in any practical good, has been questioned by some of the most gifted intellects, their recorded opinions fully confirm. That far-sighted prelate and statesman, when he declared that “Ignorance was the mother of devotion,” referring thereby to the moral sense of mankind, descried, as by prophetic vision, the sanguinary scenes of enlightened France, the learned infidelity of Germany, and the fanatical sweep of desolation now only subsiding in our own land. Morell, in his *Philosophy of the Nineteenth Century*, notwithstanding

ing the wide-spread school learning of the masses, holds that mankind do not reflect; in other words, that intelligence is not a universal attribute, but a gift, not to be acquired by any degree of learning whatever. Lecky, after a profound survey of the human mind in its progress for over two thousand years, remarks, in his "Rationalism in Europe," that while "the great majority of mankind always desire material prosperity, only a small minority always desire knowledge." And, in the language of Selden, "No man is wiser for his learning; it may administer matter to work in, or objects to work upon; but wit and wisdom are born with man," and like poetry, music and painting, are special endowments, for an especial purpose. The idea that through school learning, man can be rendered more equal, less evil, more intelligent, or less the subject of a destiny whose bound limits him to the procurement of his daily support, with adequate knowledge intuitive, for its attainment, only excites that vanity which essays to relieve him of the curse, that in the sweat of his brow shall his bread be eaten, and the vain attempt to dignify labor by school learning, instead of teaching through Christianity, resignation to an inevitable fate, is a delusion, the tendency of the times must sooner or later dissipate. In fact, no system of religion, no scheme of public police, no

form of civil government, can withstand the destructive tendency of a superficial education universally diffused. In destroying the love of labor, the cultivation of the soil is already being left to the newly arrived emigrant, or the handiwork of the mechanist, and idleness, the mother of crime, is thereby encouraged. In deluding its votary with visions of unattainable knowledge, it induces distrust in a ruling Providence, and makes him feel that in the buffetings of a blinded Goddess, lies his only hope of success. It enables the charlatan to deceive the simple, and the crafty demagogue to flood the land with blood. Verily, in the words of the poet-philosopher, "A little learning is a dangerous thing."

Finally, in the category of causes adapted to develop the latent tendency to crime, by blunting public sensibility to the moral sense of iniquity, and destroying public confidence in the panoply of law, is the execution of a woman at the Capital of the Republic, by sentence of a Court, directed by military caprice, without constitutional jurisdiction. That extraordinary disregard of a plain provision of the Bill of Rights, which accords the accused "trial by an impartial jury," and that high contempt for a sacred principle of the Common Law which holds, "that it is better that ten guilty persons escape, than that one innocent suffer,"

give evidence that our social morality is being undermined, and that the development of crime — ponderous crime, should, instead of causing wonder, incite to an enlarged appreciation of the best means for the care and management of the criminal.

These, and other questions lying at the basis of Society, involving national morality and individual accountability have, for the past quarter of a century, agitated this people and Government, as no other people or Government were ever before agitated, unless, like ancient Rome when private morals were poisoned at the public fountain, and Governor and governed vied in acts of violence and outrage, until her splendid civilization fell a prey to her follies and her crimes.

The traveller, westward bound, on entering that beautiful miniature city, formerly the

“Loveliest village of the plain,”

finds his attention arrested by cold, gray limestone walls, softened somewhat by the red sandstone belts, the coping of the turrets, the quoins, and surroundings of the black, iron-grated windows, of the Auburn State

NOTE.—Seventeenth Annual Report of the Inspectors of State Prisons of the State of New York. January 31, A. D. 1865. Senate Document No. 30, and other Legislative documents and reports pertaining thereto.

Prison. Surmounting the cupola he sees the effigy of a soldier on guard, and the tocsin in full view beneath his feet. By this time the cars have halted within the railway station, whence, after the lapse of a few minutes, at the twain blast of the locomotive they will emerge running along, not far from the prison, presenting another view of its gray walls and grim windows. In its western enclosure may be seen the unattractive rear of the new State Asylum for insane convicts.

As a philopenist, a lover of punishment to evil-doers, it may not be out of place, partly for information and partly as warning, to present a rough sketch of this extensive institution. The main edifice stretches round three sides of a square, and consists of a front central portion, three stories high, with two two-story wings having deep extensions; the whole standing on a high basement. The extensions are interrupted midway by central sections rising one story higher, so that the three sides, with the exception of the cupolas, present the same general appearance. This, the original architectural design, has lately been modified by a continuation of the south wing to the outer wall on that side. The central front building is occupied by the Warden and Agent as a residence, excepting, however, offices for himself, the clerk and State

Inspectors. In the basement of the south wing, the kitchen and mess-room are located, which, with the chapel in the second and the hospital in the upper story, occupy about one-half its capacity. The remainder, and the entire north wing, contain the cells, and are the great dormitories of the prison. The building measures in front three hundred and eighty-eight feet, and is two hundred and sixty-six feet deep. The dormitories consist of blocks of cells five tiers high, reached by galleries from corridors, which surround the entire block. These corridors are lighted by large grated windows fronting the cells. The cells, nine hundred and ninety-two in number, exclusive of the dungeons, receive their light and air from the corridors through grated doors. The dormitories are nearly fire-proof, being composed of stone and iron, having only the narrow gallery floors laid with wood. The new cells are seven feet by three feet and four inches on the floor, and seven feet and six inches high. An iron turn-up, sack-bottom bedstead and bedding; a Bible, with three or four additional books, and a night-tub, comprise their furniture. In the rear of the main building are several extensive workshops, built mostly of brick, generally two stories high, but with no greater strength of construction than ordinary buildings for mechanical purposes. To

render the surveillance complete, one side of each working apartment was formerly provided with a dark avenue, from which, through horizontal crevices, an unobserved view of both keepers and convicts could be obtained. But this right arm of the discipline has recently been abolished. The whole is surrounded by a wall from three to four feet thick, measuring five hundred feet front by fifteen hundred deep, enclosing about seventeen superficial acres. This area is divided by the building and cross walls into front, centre and garden yards. The height of the front yard wall is fifteen feet, having a main entrance and two side gates. That of the centre yard, surrounding the workshops, is thirty feet, and of the garden, the locality of the new asylum, twelve feet. The wall is furnished with a hand-rail and sentry boxes, for the protection of the infantry-armed sentinels. The general appearance of the prison is cold and repulsive, rendered peculiarly so by the material used in its construction, but does not strike the spectator on first beholding it with the heavy gloom that pervades the Eastern Penitentiary of Pennsylvania; and the feelings usually associated with a great prison are soon lost in the manifestations of life and activity.

Should the traveller chance to halt in his pursuit of health, of pleasure or of wealth, and take an internal

look at this earthly pandemonium, he may, by possibility, go on convinced, like a wise Assembly committee, who, after "taking testimony" in regard to grave charges upon its officers, ["made a rigid examination into the condition of the Prison, the manner in which its affairs are conducted; * * * also a thorough examination of the Asylum building, so far as it had progressed; and examined the accounts of moneys" (about forty thousand dollars) "expended upon it,"] were, upon an investigation, embracing a period of less than *twelve hours*, into the most subtle, the most complicated of human institutions, content to report "that the present system of inspection and management is a good and valuable one, and requires no change at the hands of the Legislature." (Assembly Doc. 143—A. D. 1858.) But the Auburn Prison, which proposes to prevent as well as punish crime—involving social power and individual liability—is too far-reaching to be comprehended by the curious in a casual visit, or analyzed by partial or incompetent committees of investigation.

The Auburn Prison, being the ensample of those at Sing Sing and Clinton, will in these remarks be the chief object; while the latter, conducted on like principles and with similar results, are introduced in elucidation of the subject generally.

Social security and retributive justice are primary ideas embodied in incarceration for crime. Self-support and convict reformation are modern additions to ancient practices. The original ideas, with their late affixes, ostensibly embrace the object of the prisons of this State. To secure society and punish offenders are axiomatic rights. Strong, high walls, with fearless, determined sentinels, are about all the appliances necessary, and the arrangement and material of construction of the Auburn Prison, show it to be ample for that purpose. But self-support and convict reformation require a more complicated material arrangement, and involve a higher degree of intellectual and moral capacity. To accomplish, in addition to a secure incarceration, so great an undertaking, a profitable system of labor must be devised; contamination from evil association be prevented, and a moral culture instituted, whereby the perverse tendencies of humanity can be transformed. The object presupposes intelligent moral managers, with an especial adaptation to the task. To present the approximation of the New York State Prisons to the proposed end, defines our present undertaking.

In approaching a subject so important in its social and individual relations as that of PRISON DISCIPLINE, it behooves us to look well at the abstract on which it

is founded, with the practices thence arising; and to examine critically their results, that a comprehensive view may be presented for the judgment of mankind.

The Auburn system of prison discipline is peculiar in feature and unmistakable in character. It is also the type of a majority of the State prisons of civilized nations, and the competitor for public favor of a system having principles and practices radically diverse. In the abstract, it is a system of physical coercion, in which the idea of moral government enters not at all. The reason and the passions are overlooked, and the uncontrollable emotions, save one, are disregarded in its administration. Fear is the element toward which its entire police regulation is directed. Upon this theory was its government originally founded, and every departure from it is a departure from its elementary principle.

In the early history of the Auburn Prison, when the convicts were employed on its own construction, working together with little restraint towards each other during the day, and at night huddled promiscuously in apartments, each accommodating fifteen or more individuals, without method or any settled plan of discipline, John D. Cray—an Englishman by birth, a retired soldier of the British army, and a coppersmith by trade, assumed its police regulation.

To this remarkable personage, endowed with wonderful physical endurance—making little difference between day and night in prosecuting his arduous labors; possessed of uncommon energy and decision of character, as portrayed in the result of his undertaking; and who, though unaided except by the work of his own hands, possessed a fund of knowledge seldom equalled even by those on whom wealth and station had showered their favors—belongs the fame, whether it be good or whether it be evil, of defining and executing a system of prison polity which has arrested the attention of civilized man.

The peculiar features of this system are, associated labor by day, entire isolation by night, and at all times perfect non-intercourse between the convicts. It has no reference to a reformation of the criminal; nor to the product of his labor being more than incidentally the means of his support, but is calculated for him solely as an offender against society, and under sentence of imprisonment at hard labor, as the penalty of his crime.

Now, to carry out a system apparently so incompatible with the inherent nature of man, penalties commensurate to its obstacles must be instituted, and corporeal punishment was resorted to as the means of its attainment. This punishment was of various

kinds, but that usually employed was the *cat*. So long as it was the ordinary instrument of coercing obedience, a visitor might pass through the working apartments without being observed by any, or at least very few of the inmates; and communication between the convicts by either sign or speech was almost wholly suppressed. The constant fear of the lash kept them in as constant subjugation to the rules, but the ceaseless strife thus waged between the will and the instincts could not long exist, without, in some degree, inducing indifference to the penalty, or injury to the mental faculties. Every sound that vibrates on the ear is a call to some other sense to assist in its relief, and each emotion has its demand upon some other faculty to relieve or help in its manifestation.

This means of enforcing obedience was for many years comparatively successful; but its demoralizing influence on him who inflicted it, and the moral and physical danger to him who bore it, became alike abhorrent to public sentiment. To illustrate: Rachel Welch, while laboring under the primal curse pronounced against her sex for disobedience in Eden, became refractory, for which she was terribly whipped by the keeper in charge. The occurrence was made the subject of a grand jury inquest, and resulted in a condemnation by the court. A legisla-

tive investigation was also instituted, and a statute passed December 10, A. D., 1827, that "no female convict, confined in any prison, shall be punished by whipping, for any misconduct in such prison." Again: Dan Smith became insane, and refused to work. Instead of an asylum to restore the unfortunate being, the *cat* was applied to cure the "crazy man." He was whipped and sent to his cell. In the excited state of his mind, he rent to shreds his wearing apparel. On the following morning he was whipped for destroying his clothes. On the succeeding night he not only destroyed the clothes on his body, but his bedding shared the same fate. Again the *cat* was applied as the sole panacea for his malady, but with as little success as before. This course was pursued at intervals for months, until at last, after having suffered more than loss of life, he was, through Executive clemency, turned upon the community, disabled in body and ruined in mind, a living monument to the barbarity of this mode of prison punishment. Again: The lifeless body of Charles S. Plumb became, February, A. D. 1846, the subject of a coroner's inquest. The facts were these: The warden testified that the convict, previous to being whipped, went above and broke out some window glass; and threw out a jug of oil, with some other property; that, at another time,

when making a noise in his cell, and being asked for his name, he replied, "steamboat," the only answer he would make; at another time he tore the books and bedding of his cell, and his own clothes. The preceding warden testified that Plumb was a "wayward boy, but not malicious; his conduct was strange, but did not indicate insanity; his strangeness was a violation of rules without any apparent motive, when he was liable to be punished." Now, it requires but little reflection to perceive that the testimony of both these wardens is nearly, if not quite, sufficient to establish his mental alienation. The commission of those petty acts without motive, for which he had been repeatedly whipped, and knew he would again be, should have sufficed to prevent further inflictions. But his insanity escaped their observation, notwithstanding it was shown by a former employer of Plumb to have existed previous to his conviction, and it was proved to be the opinion of many in the prison that he was of unsound mind.

On the post-mortem examination, the posterior surface of the trunk appeared so lacerated that the number of stripes could not be determined, but that there were not less than between three hundred and sixty and six hundred was shown by testimony. During the chastisement, the constitutional irritation com-

menced in involuntary serous evacuations. This was soon followed by prostration, succeeded by rigors, with only a slight re-action. Then came high delirium, which soon degenerated into stupor, gradually becoming comatose, and finally, after less than four days' sickness, terminating in dissolution. The cutaneous is, perhaps, the most sensitive and extensively diffused portion of the nervous system, and its sympathies are with the whole economy. The enervation commenced with the diarrhœa; the relation of parts was broken, and the physical stamina proved inadequate to sustain the shock, although the convict was in good health at the time of punishment. Thus, under the lash, perished a human being, from whose mind God had removed the light of reason, possibly to set in stronger light before the eyes of men, the inhumanity and the danger of this means of enforcing discipline.

The Board of Inspectors shortly after superceded the warden, and the succeeding Legislature passed an act—December 14th, A. D. 1847—“prohibiting the infliction of any blows whatever upon any convict, except in self-defence.” But with the loss of the cat came also the loss of that discipline which had rendered famous this prison, both at home and abroad.

The shower bath, the yoke, and the dungeon, with

some minor appliances, then became the means of maintaining order, and although in appearance they seem less severe, yet every agency by which the refractory can be subdued, requires critical investigation.

To convey an adequate idea of the force of the *bath*, when used as a corrective, would be difficult indeed; for while the culprit may exhibit no signs of extraordinary suffering, portions of the internal organization, both in function and structure, may have succumbed to its incomprehensible power. Phrenitis, amurosis, epilepsy, insanity and death are among its darker phases, while those delicate shades of mental injury, seen only in occasional aberrations, must be of frequent occurrence. To illustrate:—Convict No. 4958, in the Auburn Prison, said that “while in the stocks his head ached as though it would certainly split open, when all at once it stopped, and there was no more pain.” He came out an insane man, hopelessly incurable, though at times he conversed understandingly about it. He was subsequently transferred to the State Lunatic Asylum. Convict No. 5669 was showered with six pails of water discharged through a half-inch jet. Shortly after he fell into convulsions, from which he emerged with a mind totally destroyed. The Executive, in consequence of the injury, bestowed upon him a pardon, but he did not long

survive. Convict No. 4565, aged thirty-eight years, in good health, was showered with three pails of iced water discharged through a cribriform plate. He was taken from the stocks in convulsions which continued about thirty minutes. He had congestion of the brain, followed by severe cephalgia and mental derangement. He was bled and ultimately recovered. Another convict was struck with blindness in the stocks, and over two years elapsed before his sight returned. On a coroner's inquest, held at the Auburn Prison, the jury found "That Samuel Moore—a convict—came to his death in the State Prison at Auburn on the second day of December, A. D. 1858, from a cause which we are unable to determine positively, yet we believe, from the evidence, that it was hastened by the punishment which had been inflicted upon him; but we have no reason to believe that said punishment was unusual in such cases, or that any of the officers of said prison were at fault in the matter," notwithstanding every witness concurred in the fact of the soundness of the convict's health at the time of his punishment. It was also proved that three barrels of iced water were showered upon him at intervals during a period of forty-five minutes; that the water ran into his mouth; that during the death struggles which were so fierce that, wrenching

his hands from their firm fastenings, he slipped from his seat, and was actually hung by his neck in the stocks, and that he expired in five minutes after reaching the hospital. On the happening of this occurrence, the inspectors "Resolved that after this date the use of the shower bath as a means of punishment in any of the State Prisons of this State, be and the same is hereby prohibited." But from the shifting, unstable management of them, it is again in full operation.

Dangerous and destructive as these instances were, and difficult of intelligent application as this means of punishment is, other cases, where neither injury nor punishment were inflicted, tell with much force against a mode so difficult of comprehension. Convict No. 5446, seventeen years old, was showered with three barrels of water with little or no unpleasant effects, as he himself confessed.

Notwithstanding its severity in the generality of cases, the uncertainty of its results renders it a doubtful means of enforcing discipline. The fear it excites in the officers generally, and a knowledge of the existence of that fear emboldens the convicts in multiplied acts of petty disobediences, until the officer, wearied with his own fears and their insubordination, too often recklessly subjects the offender to the full

measure of his displeasure. Thus by it the discipline is impaired, the officer irritated, and the convict endangered. On interrogating a keeper of the Auburn Prison who had applied this instrument of punishment for several years in succession, and had witnessed its effects in perhaps more cases than any other individual connected with it, he replied "that all the information he had acquired as a guide to its use was, that the oftener a convict was showered, the less able he was to bear it." This conclusion, the result of careful observation, shows that accumulative injury was the effect of its repetition.

The yoke is formed of a flat bar of iron, four or five inches broad, from five to six feet long, and varies from thirty to forty pounds in weight. It is furnished with an iron staple in the centre, to receive the convict's neck, and one at each end for encircling the wrists, so arranged with screws on the back as to admit of fastening the arms stretched to their full extent. The centre staple rests on the lower cervical vertebra, and the bar crosses the chest in front. The severity of its application when it falls upon a convict of indomitable disposition, with a powerful physical organization and ungovernable passions, was sadly portrayed by convict No. 5904. He wore the yoke six hours and twenty minutes — two hours being the

full average time. His passions were so excessively excited that he made no confession of fault nor promise of future improvement, but breathed forth threats of ultimate vengeance. The yoke was removed and he sent to the dungeon. When brought to the hospital on the next morning, his face and eyes were inflamed; the surface of the chest and abdomen was mottled, inflamed and excessively tender; pulse sixty; tongue coated; appetite lost; sight indistinct; hearing acute; intellect deranged, and memory impaired. Occasionally his countenance expressed great emotion — momentarily bursting into tears. To relieve the heat of the head, cold water was applied. This, however, was soon relinquished, for on each application he declared that it scalded his head — so much were his sensations perverted.

This punishment is usually inflicted in presence of the convicts of the shop to which the offender belongs. During its application he is the butt of the sly jeers and ridicule of his fellows in crime, and should he be endowed with considerable powers of endurance, his suffering is proportionally increased. His pride is aroused, and nothing short of exhausted energy comes to his relief; while the more sanguine, but less persistent, show earlier signs of repentance, and obtain an earlier release.

Thus far the punishments examined are all physical

in their application and tendencies. The next, however, varies from them materially. The dungeon — silent, solitary and dark — with its concomitant bread and water diet, is regarded second only in importance in the series of prison coercives. Here again the spirit of opposition and revenge is rife. With the convict it is merely a question of endurance, but to the State, the loss of service, in the self-sustaining system, is of primary consideration. The period of confinement is usually short, and, therefore all hope of improving the convict through it is annihilated.

That these means of enforcing obedience are injurious to the moral and physical being of the convict — engendering hatred toward his fellow-man, or inducing irreparable mental imbecility — often rendering him a hopeless object of public charity ; that their infliction meets with instinctive opposition from prison officers, and does not accomplish the desired obedience ; that they are cruel to the convict and expensive to the State, none conversant with them can truthfully deny. To remedy this imperfection in the management of these prisons, a judicious combination of the Auburn congregate with the Pennsylvania solitary system, it is believed would be adequate. Indeed, the Legislature perceiving the necessity for some change in their internal government, enacted in eighteen hundred and forty seven, laws

looking to such a modification for partial relief. But they are so imperfectly digested ; so much at the discretion of prison officials ; so wanting in unity of design, and so at variance with the existing plan of support by contract labor, that they are little more than a dead letter. So long as the present financial policy is persisted in, it is clearly evident that no radical reformatory change can be effected.

Without an intimate knowledge of convict character, no successful system of prison government can be devised. Subject to like motives as other men, the mass of convicts are unlike them in being the slaves of particular motives, and unlike other men because they care not to restrain the propensity to gratify those motives. Below mediocrity in intellectual power, artful in low cunning devices, wanting in moral sensibility and moral courage, with preponderating animal desires, and no habits of reflection, they lack that steady, considerate, self-control which makes man the master of his appetites and passions. To this unbalanced though normal condition, must be attributed many of the petty disobediences so common in the prisons. Many infractions are merely emotional impulses, and to punish inherent frailties with the severity belonging to deliberate offences is manifestly wrong. There is, probably, no portion of mankind so easily controlled, as that whose destiny it is

to occupy a prison home. Individual exceptions, however, are surely to be encountered. Lawless, desperate and depraved ; at large, they respect no law, and in incarceration defy restraint. These individuals are to be subdued, and experience proves it no common task. To resist all physical coercion is the very life of their being ; and in inflicting punishment, serious injuries occur to both keepers and convicts. To this class of criminals the just, the appropriate, the humane means of discipline is permanent solitary confinement. In it no conflicts arise. All is quiet, enforcing meditation, from which alone reformation, as a legitimate result of punishment, can reasonably be expected. Solitary confinement excites more dread in the convict mind than physical liability. A disciplinary code, in which each offence should have a definite period of seclusion, accompanied with instruments for voluntary labor, and judicious restraints in diet, such seclusion to be increased in duration with each additional infraction, would rapidly decrease the minor offences, and ultimate in the permanent separation of the hopelessly incorrigible. Such a combination of prison politics would prove less injurious, more just and more effective than either one alone. In it, the *congregate system* would represent the penalty of crime against society, and the *solitary system* the penalty against prison regulations. The two, effectually

conjoined, would present emphatically an American System of Prison Discipline.

There are many influences inimical to the accomplishment of the results contemplated by society in the New York State Prisons. After the completion of the building at Auburn, the contract plan of occupation and support of criminals was introduced under the wardenship of Elam Lynds, whose iron will and incorruptible integrity to the interests of the State withstood for a time its insidious and destructive tendency. But in the successive and rapid changes of administration through which it has passed, involving the fallibility of man and the mutations of time, it has become the central power to which all else is made subservient. It is so deeply interwoven in its economy, that frequent conflicts for supremacy between the State and the contractor, render it difficult to determine which is, *de facto*, the governing power. To comprehend the strength of this influence, it must be borne in mind that each alternation of party ascendancy suddenly changes every official, from the warden to the gate tender; while the contractors may be, and often are, connected with the institution for many years in succession. It can readily be perceived how prodigiously the influence of the contractor must be increased with every change of officers. The con-

tracts are held, generally, by individuals possessed of wealth and endowed with talents; influential in society and oftener than otherwise powerful in party politics. In fact, they are among the strongest members of community. Now, it would be preposterous to suppose that individuals, whose salaries barely suffice for their support, and who depend for that support upon the precarious tenure of office, could meet, single handed, those contractors whose familiarity with the institution gives them an advantage, over both officers and convicts, absolutely incalculable. The truth is, that the interests of the contractor and the interests of the State are continually at variance. It would seem that the institution was established to gratify the cupidity of the one to the total disregard of the other; and that the momentous interests of society involved in the good management of criminals were entirely ignored. It is through this branch of polity that the corruptibility of prison inspectors is so readily attained, and which, as by contagion, reaches every grade until a full development is found in its incarcerated population.

The contract plan of support is not only detrimental to the State, but unjust to the convict, as it regards each one whose labor is contracted for, an able-bodied man, and consequently a corresponding amount of labor is required of him. The modifying influences of incarceration are disregarded, and, through bribes

from the contractor, or punishment by the keeper, he is driven on until he falls under the care of the physician, again to run, on his restoration to health, the usual round of injustice. To illustrate:—The stint for each brussels carpet weaver is four yards daily. This amount to an active, healthy, experienced workman, with alternations of rest, is not excessive, and he goes through life uninjured by his occupation. But it is well known that, with occasional exceptions, four years spent in brussels weaving in the Auburn Prison consumes the physical energy. Alternate periods of rest are indispensable to physical integrity, but of these the convict is necessarily deprived. Even the Christian Sabbath is no relief to him. Although he does not work, the extra confinement in his badly ventilated cell is less supportable than his week day labor.

The material composing the population of this prison, is shown in the record of five hundred and eighty convicts received during a period of two years. Of these, 238 came in more or less sick; 190 had sustained mechanical injuries; 83 were consumptive or had consumption in their families; 23 were ruptured; 5 insane; 3 epileptic, and the remaining 38 were adjudged sound. As nearly as could be determined, 369 were of Saxon blood; 148 Celtic; 57 African; 3 Jewish, and 3 aboriginal. Now, to say that the State ever intended to define the amount of daily labor to be

equal on each individual of this motley mass, differing widely in health, in mental power, in temperament, in physical organization, would be to charge it with imbecility. And yet, the contract plan, utterly disregarding these conditions, places them all on the same footing with, perhaps, the exception of palpable bodily infirmity.

The discipline is also seriously impaired by the common practice of bribing convicts to increased exertion. Shut up from the pleasures and luxuries of life, the appetite becomes a mighty lever in the hands of the unscrupulous. The craving for fruit, confectionary, spirits and whatever may be the desire of taste or fancy, are the means whereby many a convict is driven to labor with a zeal almost unaccountable. To gratify these cravings is to overstep the rules of order. Yet it is the secret work of daily practice, and when discovered by the officer on duty, it is at his peril that he reports the offender. Experience, gained by precept and example, has taught him that the money power of the contractor is more efficient, in prison management, than the political influence of the officials in whose keeping they are but apparently placed.

Upon a close investigation it would be found that the financial result of this system, is as unprofitable to the State as its moral effects are pernicious to the officers and convicts. The endless variety of claims

which a fertile ingenuity, stimulated by the insatiate thirst of gain, presents as offsets to liability ; and the prodigious loss by failure, if exhibited in a balance sheet comprising the monetary operation of the prisons for the past twenty-five years, would show the State immensely the loser. "The experience," say the inspectors in their Tenth Annual Report, "of all connected with the prisons, has demonstrated the utter folly of a resort to litigation between the Agents of the prisons and contractors ; the result, in every instance, having been disastrous to the interests of the State." Governor Morgan, in his Annual Message to the Legislature, January 4th, A. D. 1859, in referring to the change in prison administration under the State constitution of eighteen hundred and forty-six, says that "the expenditures of the three prisons have exceeded the earnings, in these twelve years, over one and a half millions of dollars, which have been paid from the general fund. It is well to know that our prison system is much more expensive than the system in operation in several other States ; while in discipline and management it is inferior to some others."

By superceding the contract plan of support, these conflicts between the State and the citizen would cease. Employed on branches of industry selected to prepare them to obtain a living when liberated, and to pay in part the cost of confinement, the incarceration

of criminals could be managed for their prospective welfare and to the advantage of society.

The mistaken — nay, improvident use made of the pardoning power is to many reflecting minds a source of profound regret. It reflects upon the character of the courts, and oftentimes turns upon community prematurely the most abandoned criminals. During the first decade under this constitution, there were bestowed over two thousand pardons, and in the last official year, one hundred were granted to the inmates of the three prisons. That so large a portion should be liberated on the ground of reformation, depends upon an inadequate knowledge of convict character, and is the result of a serious delusion. This gift has become so common, that, by practicing hypocrisy in some form, very many convicts deem it a right to which they are justly entitled, and if withheld, an act of oppression towards them. A restriction of pardon to cases of excessive severity of sentence, and convictions on doubtful testimony, would establish the intercourse between convict and keeper on a natural foundation, and secure society against much imposition.

An item of twenty-one hundred and sixty-three dollars received from visitors admitted to the prisons during the last fiscal year, is presented in the seventeenth annual report. The practice of exhibiting convicts to the gaze of idle curiosity, much as wild

beasts are shown to the multitude in a menagerie, and at the same cost of admission, is the source of unnecessary mortification to those sensible of their degradation; a troublesome diversion of attention to others; to many a source of excitement leading to physical injury, and altogether inconsistent with that quiet, orderly, secluded condition necessary to the best management of the prisons, and incompatible with the dignity of the State.

The Asylum for insane convicts, lately erected on the grounds of the Auburn Prison, relieves these institutions of the care of this class of convicts. But the relation this discipline bears to insanity requires a wider range than the limit of this investigation will permit. Not less, however, than three per centum of the State convicts become deranged. Many causes operate to produce this sad result. Some inhere to every system of prison discipline, but many are peculiar to this alone. Its effects on the inmates at Auburn were so obvious, that the Superintendent of the State Lunatic Asylum at Utica, in his report transmitted February, A. D. 1852 — Senate Doc. No. 46 — saw fit to remark that “common humanity demands that these facts should not pass unnoticed.”

The medical portion of this report presents the usual healthfulness of the prisons. During the year, forty of their inmates paid the debt of nature. But

their entire range of hygiene, we are led to conclude, has reached that point beyond which science is inoperative. Cleanliness, ventilation, warming, lighting, sustenance, clothing, dryness and moisture, are only alluded to. Even that fell disease, which in a series of thirty-three years caused thirty-five per centum of the mortality in the Auburn prison, elicits but a passing remark, notwithstanding the proportion is increasing from pulmonary affections.

Like most questions involving social problems, penal life has become a favorite object of *progress*. Private exertion zealously overflows with benevolence toward it, and extraordinary favor is sought through legislative aid in its behalf. The intellectual cultivation and moral reformation of criminals have elicited the guardianship of its *spirit*, and the convict is coming to be regarded as more unfortunate than wicked.

In touching a subject so indifferently comprehended as crime, misconception and reproach may be apprehended: But that misguided zeal will prove more mischievous than apathetic conservatism, a knowledge of convict character will fully verify. The extraordinary effort to educate the convict to reform him, is seed sown in a barren soil. The harvest return will not repay the laborer. The popular belief that ignorance is the source of crime, and consequently intellectual cultivation — *i. e.*, the ability to read, write

and to calculate,—will improve the moral sentiment, statistics accompanying prison reports for the past seventeen years show to be an error. At Sing Sing, in the year 1848, the average number of convicts was seven hundred and forty-four, of which seventy-five per centum possessed in some degree the elements of education, and of that number only one hundred and seventy-six were convictions of the year. In 1856, eight years thereafter, the average number was nine hundred and sixty-three, and of the three hundred and forty-six new convictions, but one of their number was unable to read. In 1864, eight years more, the average number was nine hundred and forty-three, two hundred and thirty-one being the convictions of that year, and but thirty-six of them were without some education. At Auburn the reports of 1848 and 1856 show no better results, while that of 1864 informs us that of the five hundred and fifty convicts there confined, the degrees of education are, “seven classical, fourteen academic, two hundred and thirty-seven common school, two hundred read and write, fifty-two read only, and forty-one are without education,” presenting proportionally, a higher grade of education than that of the surrounding community. From these facts, in connection with the almost universal diffusion of education emanating from the free school system, and the disproportional increase of crime to the increase of pop-

ulation, it appears quite safe to conclude, that school learning is no preventive of crime against society, nor, as will shortly appear, any barrier to disobedience within prison walls. In fact, a large proportion of offences presuppose a tolerably educated offender. It is at least doubtful whether education confers either happiness or morality. It sharpens the intellect, it illumines the path of ambition, it fits man for more successful conflict with his fellow, but it approaches not the moral sensibility. Instructing convicts in school learning is calculated to withdraw them from a serious contemplation of their own imperfections, by exciting a worldly activity during a period that would otherwise be passed in quiet, silent reflection. Moral improvement is the result of self-examination, and to perpetually intrude upon the limited solitude allowed by this discipline, is to thwart the desired end. The avidity with which convicts seize the opportunity of instruction, is to obtain exemption from their own reflections. To gain this, ingenuity puts forth, in every conceivable way, its wonderful powers.

In 1848, the disciplinary punishments in the Sing Sing Prison amounted to forty-seven per centum on the average number of convicts. In 1856 it rose to seventy-two. In 1863 it went up to one hundred and thirty-six, and in 1864 it amounted to one hundred and fifty, showing that the number of punishments had trebled within that period.

The disciplinary statistics of the prison at Sing Sing have been selected to show the utter failure of the reformatory scheme in the internal management of these prisons. It is here that intellectual as well as moral training has been the most persistently pursued, and it was from this focus of all their rays that a renewed convict nature was to burst forth in millennial glory. As an illustration of the views involved for a long time in its management, the following, from the report of the Warden—October, A. D. 1862—is but a fair example:—“It is almost too much to expect that punishment in a penal institution can be entirely dispensed with; but I am convinced that it may, by proper management, seldom be found necessary to resort to it. In studying the character of these prisoners, I find they are not unlike other men in their dispositions: if they are well treated, they appreciate it, and, if they are subject to a long course of abuse, they become reckless, and often desperate; and I am strongly of opinion that a large proportion of the punishments hitherto inflicted have been as much the fault of those placed in authority over them as of the criminals themselves.” During the official year ending October, A. D. 1863, under this Warden, on an average of eight hundred and ninety convicts, there were six hundred and seven of their number punished altogether twelve hundred and fifteen times; and in the following

year, on an average of seven hundred and ninety-six, there were fourteen hundred and three inflictions for disorderly conduct, being an increase, as before stated, of one hundred and fifty per centum during these seventeen years of reformatory experiment.

Among the supplemental reports, those of the chaplains are worthy of an especial consideration. In turning back to the Tenth, it appears that, "although the results," in the language of the chaplain at Sing Sing, "of the moral and religious appliances of the year are not as favorable as could be desired, yet I have reason to regard them as being, on the whole, more satisfactory than those of the previous year. While I am obliged to confess the too evident fact that a number of convicts, comparatively small, however, gave fearful evidence, a few months since, of a stubborn and reckless spirit, I am happy in the conviction that even they have recently manifested a subdued and quiet temper, while the large majority have exhibited no other disposition during the entire year. This general quiet and observance of good order are referable as much to the wholesome *discipline* directed by the ordinance of your own Board, as to the *moral* and *religious* appliances." At Auburn, the chaplain says: "I have good reason to believe that *several*, by the blessing of God upon my humble efforts, have not only been thoroughly reformed, but evangelically converted." "The reformation of con-

victs," remarks the chaplain at Clinton, "desirable and important as the work appears, is attended with many difficulties. This will be readily conceded, even by those who have but a limited acquaintance with their history; yet it is most evident that the influence of our prison discipline is reformatory, and that very many subjected to it become wiser and better men. * * * The field in which I labor is hard to cultivate, and yet it is an interesting field, not wholly barren and unfruitful. The seed sown may, to a lamentable extent, be choked by thorns; yet some has fallen upon good ground, and will produce precious fruits, to be at last gathered by the reaper in the final harvest." The discriminating judgment and sincere, hopeful piety thus expressed, is ample testimony to the faithful performance, yet comparative fruitlessness of his labors, and presents a just counterpart to the results at Sing Sing and Auburn at the close of the first decade of the new system of prison government. Seven years later, in the Seventeenth Annual Report, it is observed by the chaplain of the Auburn Prison, that "much labor with little fruit is the result of our best efforts in the religious culture of these men. Good impressions are readily made on this class of minds, for they are an impressible people; but their goodness is as a morning cloud, and as the early dew it goeth away."

On examining the series of reports, we find, not-

withstanding the signal failure to accomplish any considerable degree of success after an educational and reformatory course diligently pursued for seventeen years, and operating upon over four generations of prison population, that reformation is still the absorbing idea involved in incarceration by these spiritual advisers. To those looking at the future state only as worthy of serious contemplation, and the present as but preparatory to it, such views of the penitentiaries may be charitably excused. But when men, placed at the head of the great prison polity of the State, not only acknowledge it to be so, but proceed to act upon it as a portion, in their own language, of "the great law of progress," and propose to engraft a line of conduct upon so baseless a fabric, they richly deserve the condemnation of every statesman and every philosopher. "If," say the Inspectors, in their Tenth Annual Report, "as now almost universally admitted, the present theory of prison discipline is the reformation of offenders, and the object is to return them to society wiser and better men, then, in our judgment, nothing could be more advantageous than to make them, in some degree, the arbiters of their own destinies." To accomplish a result so desirable, they propose to "show to them that, though compelled to seclude them for a time from the society of friends, to deprive them of the liberty to control their own actions, and to be obliged

to come and to go at the bidding of another, yet, even there, good conduct brings with it its reward, and constant application to duties imposed, and steady conformity to the regulations laid down to govern their conduct, pass to their credit on the books of the institution." And, to induce — *i. e.*, *buy* — these criminals to become "wiser and better men," and to observe diligently prison rules, they advise the Legislature to enact, which it subsequently did, that "a sum of money or time, however small at first, yet, if regularly added to monthly, is certain to amount in the aggregate to a considerable one, and you have given them a stimulus, and an incentive which, in the end, is likely to make the most hardened, desperate one feel that the law of kindness is over him, and that which he has perhaps taught himself to believe was only vengeance inflicted upon him, was in reality the wisest and best act that community, in its aggregate capacity, could have performed for him." But simple sentimentalities are poorly adapted to prison life and convict character. The idea of *hiring*! — *bribing*! — convicts to conform to prison rules by offers of money, of shortened sentence, of the perusal of entertaining books, of correspondence with and visits from friends, by promises of a "clean certificate of good conduct, without which no pardon can be obtained," and, finally, the hope of Executive mercy itself, are so calculated to make them hypo-

crites, that it is difficult to conceive how it entered the mind of man to propose a scheme so fraught with deep-laid injury to the convict, so at variance with the object of the prisons, and so unjust to society at large. Were it possible to obtain reliable statistics of convict recommitments, they would show the inherent depravity of convict character so far beyond the reach of prison reformation as to teach *progressionists* an instructive lesson in the changeless and unfathomable nature of man.

In this endeavor to exhibit the general policy and condition of the New York State Prisons, circumstances operating mostly within their walls have been presented. Other influences, however, standing between the prisons and the State, have yet to be analyzed in their bearing on the character, usefulness and ultimate perfection of them.

Incompatible with punishment, self-support and reformation, assumed to be inherent in these institutions, there exists a deplorable want of moral integrity and business capacity on the part of the greater portion of their legally constituted inspectors. Were it necessary to go back of common fame to sustain these allegations, a cursory review of reports of investigating committees would be ample indeed. For instance:—The Legislative Committee of 1851, in their report, say, in its very inception, “that it does not appear that the inspectors either fulfil the expect-

tations of the framers of the constitutions that created them, or comply with the statutes that govern them.” (Assembly Doc. No. 20, A. D. 1852.) So incapable had they proved themselves to be, and so corrupt had they become in the short period of four years as to merit the denunciations there recorded.

Whether the reiterated charges of dishonorable collusions; duplicity; speculation and general disregard of the objects and interests of these institutions are true in full, may be questionable. But that an accumulation of facts exists, sufficient to condemn this branch of the State government, none conversant with its history can deny. The committee of 1854 to investigate the pecuniary affairs of the prisons — Assembly Doc. No. 60, A. D. 1855, on page 162 — say “That inspector ——— is shown to have violated prison laws, interfered with prison discipline, used prison property and public credit for his private benefit, exercised, we think, the appointing power for a consideration, and in utter disregard of the public interests and his duty, to have retained in office the clerk, after he had himself denounced him, and other officers whose unfitness was notorious.” It also appears that with inspectors *generally* — page 131 — the rewarding of personal or political favorites appeared to be an object of greater importance than the State, the welfare of the prisons, or the physical and moral condition of their inmates.” And in

regard to peculations, in the language of the committee — page 151 — “without stopping to comment upon the propriety of the inspectors conferring with contractors as to the best means to avoid their legal obligations,” &c., &c., it remains — page 156 — “for the Legislature, upon an examination of the testimony herewith presented, * * * to make such legal provisions as shall prevent the recurrence of a like disregard of private rights and public interests.” Thus we find them deranging the prisons, debasing the convicts, corrupting contractors, dishonoring the State, and making themselves a party to transactions, the obliquity of which is scarcely paralleled in the institutions under their charge.

From these facts it appears that the comparatively mild denunciations of the committee of 1851 produced no change in the general malfeasance of inspectors for several succeeding years, and there can be no reasonable doubt, that a committee, bringing honesty of purpose with ability, to the task, and clothed with power to penetrate the recesses of official and private corruption in connection with the prisons, would show that neither the dishonorable practices already brought to light, nor the foundation upon which they rest, have in aught been disturbed.

In presenting this subject in its naked, unvarnished truth, there is no desire to reproduce facts merely to expose their deformity, but to present the general

policy and common practices, that light may be thrown on the vexed condition into which these prisons have fallen. With increasing numbers, bating the ephemeral influence of the war, a deranged finance and dilapidated discipline, it is clearly evident that a regenerating process is necessary for their renovation, which can never arise from its present polity. The underlying obstacle is to be found in the character and qualifications of that class of politicians whence their inspection is usually drawn. It is lamentable, but nevertheless true, that in the State nominations of every political party there are aspirants, confessedly incompetent, to be provided for; and for the general misapprehension of the importance of these institutions, their management has been set apart for their special benefit. No antecedent of immorality, nor any experimental evidence of business incapacity are sufficient to exclude them from the care and management of criminals. It appears not to be considered that evil example in high places will not be lost on those already degraded, nor that the keen intellect of the commercial man and the manufacturer will assuredly detect the unequal match unwittingly thrown in their way. Thus are the people forestalled and the State sacrificed to partisan success. It is significant to remark, that of twenty Inspectors elected under this constitution, but three of their number have been returned to that post by the people.

With this report closes the seventeenth year of the conduct and management of the New York State Prisons under the provisions of the new constitution. Nearly five convict generations have passed in review since the moral superceded in part the physical government in them, and with an experience accumulated from means so abundant, philosophic deductions would have been a more acceptable offering to mankind, and a more valuable guide to future legislation than the record of mawkish sensibility, of fulsome compliment, or the mere barren presentation of statistics which we have before us. From a field so broad, it might have been profitably shown that poverty and disease, intemperance, insanity and crime, are at least in part inheritances, and that penal statutes, to be effective, must be adapted to the abnormal, as well as normal condition of criminals. The subject of prison discipline to this State, is a subject of vast importance. It is that feature which will stand out upon its history long after the co-existent financial and political policy will have been forgotten, or merged in that of surrounding nations. It is through it that she speaks to the social organizations of men. Crime and its concomitants have been the enigma of philosophers and statesmen in all stages of society, and the result of this experiment, whether it be good or whether it be evil, is due to the world as a beacon to succeeding generations.

LETTER

TO A WHIG MEMBER OF THE SOUTHERN
INDEPENDENCE ASSOCIATION.



